



**LETTER OF INTENT**

and

Other Material Required by  
The City of Brookhaven Zoning Ordinance  
for the  
Rezoning Application

of

Redwood General Contractors, LLC

for

$\pm$  0.52 Acres of Land  
located in  
Land Lot 272, 18<sup>th</sup> District, DeKalb County  
Address: 2940 Caldwell Road, Brookhaven, GA 30019

**R-60 to RM-100**

Submitted for Applicant by:

Dennis J. Webb, Jr.  
Robert D. Griest  
Smith, Gambrell & Russell, LLP  
Promenade, Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

## **I. INTRODUCTION**

This Application seeks to rezone a single tract of land totaling  $\pm$  0.52 acres located at 2940 Caldwell Road, Brookhaven, Georgia 30019 (hereinafter the "Subject Property") from R-60 (Single-Family Residential) to RM-100 (Multi-Family Residential) for the development of six (6) single-family attached townhomes. The City of Brookhaven 2034 Comprehensive Plan designates the Subject Property as within the "Peachtree Corridor Overlay District" which allows residential development between 12 and 120 units per acre and fully allows this use. The proposed density is 11.5 units per acre.

The Subject Property is located on Caldwell Road, a tertiary street southeast of and running parallel to Peachtree Road and the MARTA train line between Dresden Drive and Redding Road. To the west, the Subject Property is directly bordered by the Post Brookhaven Apartments (zoned RM-75) and to the east by an eleven-home cluster development on Alden Place Drive (zoned R-A5). South of and directly across Caldwell Road is a condominium complex (Ashford Park Condominium Association, zoned RM-75). The greater area to the south is comprised of traditional single-family neighborhoods (zoned R-75 and R-100). At present, the Subject Property contains a deteriorating one-story, single-family home built in 1951.

The Applicant submits this document as a Letter of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a Written Justification for the Application as required by the City of Brookhaven Zoning Ordinance, § 27-1 *et seq.* A site plan has been filed with the Application, along with other required materials.

## **II. IMPACT ANALYSIS**

### **A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.**

Yes. The Subject Property is designated by the City's Comprehensive Plan as being within the Peachtree Corridor Overlay District ("Overlay District"). The intent of the Overlay District is to promote "mixed-use, pedestrian-friendly development centered around the Brookhaven MARTA station." The Overlay District expressly allows for townhomes, and recommends residential densities between 12 and 120 units per acre. The proposed development will consist of 11.5 units per acre, which is right at the lower end of the recommended 12 units per acre. Accordingly, the density of the proposed use is in conformity with the Comprehensive Plan.

### **B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties.**

Yes. The Subject Property is surrounded entirely by similar uses. In fact, the Subject Property is one of the last underdeveloped parcels in the Overlay District,

and rezoning it to the requested RM-100 designation would provide desirable infill redevelopment that fits with the existing uses. The RM-100 zoning district is appropriate as it provides a logical transition between the high-intensity use to the west (Post Brookhaven Apartments) and the medium-intensity use to the east (11-home cluster development). Further, RM-100 is appropriate given the RM-75 development south of and across Caldwell Road. Each of these existing developments being residential in nature, the proposed use is not only suitable, but mandatory.

**C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

No. The Subject Property is located between a significant apartment complex and a medium-density cluster home development. It is also north of and directly across the street from a condominium development. Hence, the Subject Property cannot reasonably be redeveloped under the use and density limitations of the current R-60 zoning classification. Further, the City of Brookhaven, in its Comprehensive Plan, has recognized the Subject Property as being in need of redevelopment at a significantly higher density – between 12 and 120 units per acre. In contrast, the current R-60 zoning allows only a single-family detached dwelling, which is inconsistent with the City’s vision for this area and ultimately strips the Subject Property of its economic value.

The Zoning Ordinance of the City of Brookhaven lacks adequate standards



for the Mayor and City Council to exercise its power to zone and rezone. In essence, the standards are not sufficient to contain the discretion of the Mayor and City Council and to provide the courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Mayor and City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Ordinance also violates Article I, Section III, Paragraph 1, and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia.

The current zoning of the Subject Property is contrary to the best interests and the health and welfare of the citizens of Brookhaven, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia. Furthermore, the current zoning violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the current zoning of the Subject Property is unconstitutional in that it renders the Subject Property unusable and destroys its marketability.

Therefore, the current zoning constitutes a taking of the owner's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1 of the Constitution of Georgia.

Failure to approve this Application to rezone the Subject Property to RM-100, or to zone the property to any other classification including other intervening classifications, would be contrary to the best interest of the health and welfare of the citizens of Brookhaven, and would further constitute an arbitrary and capricious act. As such, failure to approve this Application would constitute a violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, together with the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia and the First Amendment of the Constitution of the United States of

America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph 9 of the Constitution of Georgia and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia and the Constitution of the United States of America.

A refusal to allow the use in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph 4 of the Georgia Constitution.

The Zoning Ordinance of the City of Dunwoody is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

**D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.**

No. All of the surrounding and nearby properties are medium- to high-density residential uses. Thus, the proposed development will be fully consistent with the existing uses on Caldwell Road. Additionally, the proposed increase in density is appropriate as it will provide a logical transition and step-down in density between the highly-intense Post Brookhaven Apartments and the cluster homes on Alden Place Drive. Finally, the proposed townhomes will be developed



in a manner consistent with the existing uses, and all reasonable efforts will be made to eliminate any potentially adverse impacts of the development.

**E. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

See Subsection C above.

**F. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal.**

Yes. The prevailing economic conditions and the development trends in the area support approval of this Application. The Subject Property is located in an area consisting exclusively of medium- to high-density residential development. The City of Brookhaven has expressly recognized this trend by designating the Subject Property as within the Overlay District. Thus, the Comprehensive Plan's vision for the Subject Property, which for the purposes of density recommends—at a minimum—the density of the requested RM-100 classification, provides strong support for the approval of this Application.

**G. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.**

No. The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the approval of this rezoning request.



**H. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

No. The proposed development will not overly burden existing streets or transportation facilities. The Subject Property is located on Caldwell Road, which provides direct access to Dresden Drive and Redding Road, and thereafter to Peachtree Road. The Subject Property's current use (single-family home) generates approximately 9.52 total weekday trips, 0.77 AM peak trips, and 1.02 PM peak trips.<sup>1</sup> The proposed use would generate approximately 34.86 total weekday trips, 2.64 AM peak trips, and 3.12 PM peak trips.<sup>2</sup> This means that the proposed use would generate only 25.34 additional weekday trips, 1.87 additional AM peak trips, and 2.1 additional PM peak trips. Thus, the existing transportation network is more than adequate to accommodate the minor number of additional trips the proposed development will generate.

As for utilities, the Subject Property has existing access to water and sewer. Finally, the proposed development will only create five (5) *additional* single-family homes (in addition to the existing home). According to standardized school

---

<sup>1</sup> ITE Trip Generation Manual (9<sup>th</sup> Ed.), "Single-Family Detached Housing", Code 210.

<sup>2</sup> ITE Trip Generation Manual (9<sup>th</sup> Ed.), "Residential Condominium/Townhouse", Code 230.

statistics,<sup>3</sup> five additional homes would generate approximately 2.75 additional elementary school students, 1.2 additional middle school students, and 1.4 additional high school students. These projected minor additions should not create an undue burden on the local school system.

#### **IV. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests approval of this Application to rezone the Subject Property from R-60 to RM-100. The Applicant also invites and welcomes any comments from City staff or other officials so that such recommendations or input may be incorporated as conditions of approval of this Application.

This 7th day of January, 2015.

Smith, Gambrell & Russell, LLP  
Promenade, Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

Respectfully submitted,



Dennis J. Webb, Jr.  
Robert D. Griest  
*Attorneys For Applicant*

---

<sup>3</sup> The statistical data was provided by Fulton County, Georgia. Due to the close proximity of Fulton County to DeKalb County, the Applicant believes the data is a reliable indicator of the number of students the proposed use will generate into the DeKalb County public school system. Under the statistical formulation used, one single-family home generates 0.55 elementary students, 0.24 middle school students, and 0.28 high school students.